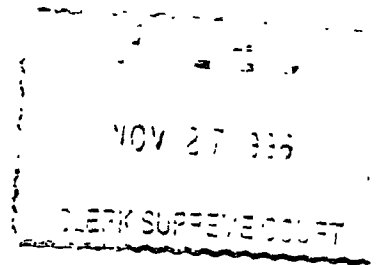


IN THE COURT OF APPEALS OF IOWA

No. 6-491 / 96-0243



**IN RE THE MARRIAGE OF REGINE JEANNE ODETTE KETELSEN
AND DAVE GILBERT KETELSEN**

**Upon the Petition of
REGINE JEANNE ODETTE KETELSEN,**

Petitioner-Appellant,

**And Concerning
DAVE GILBERT KETELSEN,**

Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, James R. Havercamp,
Judge.

Regine Ketelsen appeals from the custodial provisions of the parties' dissolution
decree. **AFFIRMED.**

Douglas C. Scovil of Ruud, Scovil & Marsh, Rock Island, Illinois, for appellant.

Edward N. Wehr of Wehr, Berger, Lane & Stevens, Davenport, for appellee.

Heard by Cady, P.J., and Huitink and Streit, JJ.

HUTTINK, J.

Petitioner Regine Odette Ketelsen appeals the custodial provisions of the decree dissolving her marriage to the Respondent David Ketelsen. We affirm.

Regine and David were married July 11, 1982. They have two children, Austin, born March 3, 1988, and Myles, born December 22, 1992, and adopted by the parties in April 1995. The parties separated in November 1994 and the marriage was dissolved on January 5, 1996. At the time of the dissolution, David was 36 years-old and Regine was 34.

Regine is a high school graduate and has attended but did not graduate from college. She is presently employed as an account representative for Continuing Care Services, a Genesis Hospital Affiliate, and works Monday through Friday 8:00 a.m. to 4:30 p.m. She has a net monthly income of \$1028. Before her present employment, she worked evening shifts.

David is a high school and college graduate. He is employed by the Iowa-Missouri Conference of Seventh Day Adventists. He currently serves as a pastor at churches in Davenport and Clinton where he earns a net monthly income of \$2610. In ministering to the 230-member Davenport and 40-member Clinton congregations, he fulfills many responsibilities during the day and evening hours. He estimated at trial that he spends an average of nine hours per day performing his pastoral duties. He also frequently travels to Missouri to attend meetings.

Both parties reside in Davenport, Iowa. David lives in the three-bedroom church parsonage, and Regine lives in a two-bedroom duplex.

Both parties requested an award of physical care. The district court found that Regine “had not recently shown an ability to advance the best interests of the children over her personal agenda and desires, which has had some adverse effect upon Austin.” In contrast, the district court concluded that David “presently maintains the most stable environment, one that the children are accustomed to, and has the ability to continue that situation.” As a result, David was awarded physical care of the children.

Regine appeals the physical care award to David. She contends that David’s pastoral obligations are too demanding to permit him to meet the demands of physical care. Regine predicts David’s practice of bringing the children to the church will produce instability in their lives and leave little quality time with their father. Regine cites her 8:00 a.m. to 4:30 p.m. schedule and her primary care experience as additional reasons supporting her physical care demands.

Regine also argues that the district court assigned too much weight to her extramarital affairs and her lack of strict adherence to the tenets of the Seventh Day Adventist Church. She cites the absence of any evidence that suggests her behavior has had any negative consequences for the children. She argues the evidence indicates that the children are socially and emotionally well adjusted. She also contends that David’s allegations of her substance abuse are unsubstantiated and that he used cocaine in 1982.

David disputes Regine's claim that the demands of his profession leave him without adequate time to attend to the children's physical care. He also disputes Regine's claims of greater primary care experience citing her frequent absence from their home and the distractions of her extramarital relationships. Contrary to Regine's assertions, David claims the evidence shows Regine's extramarital relationships have resulted in confusion and anxiety for the children. He claims Regine has demonstrated poor parental judgment by allowing her companion, Rick Voss, overnight visits while the children were present in her home.

Our review in this case is de novo. Iowa R. App. P. R.4. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983). We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P.14(f)(7).

The critical issue is not which parent possesses the greater right to the children, rather the controlling consideration must be the best interest of the children. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). This decision requires selection of a custodial parent who can minister more effectively to the long range best interest of the children. The objective should always be to place the children in the environment most likely to bring them to healthy physical, mental and social maturity. *See In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974). The court should also consider the

characteristics and needs of each child, the characteristics of the parents, the capacity and desire of each parent to provide for the needs of the children, the relationship of the children with each parent, the nature of each proposed environment and the effect of continuing or changing an existing custodial status. *Id.*

Moral misconduct is a factor to be considered in custody determinations. *In re Marriage of Hornung*, 480 N.W.2d 91, 93 (Iowa App. 1991). However, we have declined to place emphasis on a party's extramarital affairs in the absence of evidence that the children have been exposed to such activities. *See In re Marriage of Burkle*, 525 N.W.2d 439, 442 (Iowa App. 1994). Furthermore, we are mindful of the precept that custody determinations are not intended as punishments or rewards. *See In re Marriage of Kleist*, 538 N.W.2d 273, 277 (Iowa 1993); *In re Marriage of Bowen*, 219 N.W.2d 683, 687 (Iowa 1974).

Our review of the record confirms the district court's assessment of the parties relative stability. Although neither parent is free from imperfection, David has distinguished himself as the parent possessing greater maturity and better judgment. He offers the children the benefit of a secure and familiar environment. Moreover, David has also demonstrated an ability to balance his parental and professional obligations. We find the proximity of David's professional and domestic environment enhances rather than impedes his ability to attend to the demands of physical care.

In reaching this conclusion, we do not imply that Regine is not an acceptable physical caretaker nor do we intend to minimize the value of her parental contributions.

However, we are required to determine which of two capable parents offer the physical care environment most suitable for the children's physical, emotional and social maturity. *See In re Marriage of Winter*, 223 N.W.2d at 167. In this case, we have concluded that the prospects of achieving these custodial objectives are greater if the parties are awarded joint custody and David is awarded physical care. The judgment of the district court is affirmed on this issue.

Regine also appeals the visitation provisions of the decree. She asserts the trial court erred in simply granting "reasonable visitation" rather than setting forth a more specific allocation of visitation time.

David responds that Regine failed to preserve error on this issue by either raising it when the court asked counsel what the issues for trial would be, or by filing a Rule 179(b) Motion to request a more specific visitation schedule. *See Iowa R.Civ.P. 179(b)*. A rule 179(b) motion is essential to preservation of error when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication. *State Farm Mutual Automobile Insurance Co. v. Pflibsen*, 350 N.W.2d 202, 206 (Iowa 1984) (citations omitted); *see also Iowa R.Civ.P. 179(b)*. The visitation issue was considered and resolved by the trial court in this case. Therefore, we find that

it was unnecessary for Regine to file a 179(b) motion to preserve error on her visitation claims.

Regine requests that we impose a visitation schedule comparable to that ordered in *In re Marriage of Toedter*, 473 N.W.2d 233, 235 (Iowa App. 1991). In *Toedter*, the mother was granted overnight visitation one night per week and six weeks of summer visitation, in addition to the alternate holidays and weekends granted by the trial court. Regine is awarded reasonable visitation including alternating weekends, holidays, and six weeks of summer visitation. The remaining details of the visitation shall be determined on remand to the district court. We do not retain jurisdiction for this purpose.

Finally, David requests that he not be assessed printing costs for the appendix. He argues Regine's inclusion of the entire trial transcript was excessive. Iowa rule of Appellate Procedure 15(a) provides that the appendix is to contain only relevant portions of the record. *In re Marriage of Lacaeyse*, 461 N.W.2d 475, 478 (Iowa 1990). The inclusion of irrelevant portions of the record results in two problems: additional printing expense and "an unwarranted reading burden on the members of appellate courts." *Id.* (quoting *State v. Oppelt*, 329 N.W.2d 17, 21 (Iowa 1983)). Regine has included substantially all of the trial transcript. However, nearly all of her inclusions relate directly to the sole issue on appeal, that is, the custody issue. We, therefore,

assess 75% of the cost of the appendix to Regine and 25% to David. The remaining costs are assessed one-half to each party.

AFFIRMED.